

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ABRAHAM SCHWARTZ,

Case No. 23-CV-06870-KMK-AEK

Plaintiff,

-against-

**PLAINTIFF'S SECOND NOTICE  
FOR PRODUCTION**

BERKSHIRE LIFE INSURANCE COMPANY  
OF AMERICA,

Defendant.  
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The Plaintiff ABRAHAM SCHWARTZ, (hereinafter "SCHWARTZ" or "Plaintiff"), by his attorneys The Law Office of Mitchell Winn, PLLC, as and for his Second Notice for Production pursuant to FRCP 34, demands that the Defendant BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA, OF AMERICA (hereinafter "BERKSHIRE" or "Defendant") produce, on or before the date set forth in this request for inspection and copying by the Plaintiff, at the LAW OFFICE OF MITCHELL J. WINN, PLLC, 300 Garden City Plaza, Suite 226, Garden City, New York, New York 11530 all of the documents listed below in the said Defendant's possession, custody or control.

**PLEASE TAKE FURTHER NOTICE** that said Defendant may comply with this request by forwarding a copy of any document or other item requested to counsel for the Plaintiff postmarked prior to the date for which production has been designated, together with a letter from Defendant's attorney advising as to the completeness of the items provided. You are also requested to make an appropriate designation as to the paragraph pursuant to which each document or other item is produced. If a document or other item is produced pursuant to more than one paragraph, the designation should so indicate.

**PLEASE TAKE FURTHER NOTICE** that the Defendant is hereby required to produce on the trial of this action the originals of any documents or other items requested herein and upon the Defendant's failure to do so, parole or secondary evidence thereof and of the contents of the

same will be given.

**PLEASE TAKE FURTHER NOTICE** , that the Plaintiff will object to the introduction of any mentioned documents into evidence at trial if the Defendant fails to comply with this Notice of discovery and Inspection.

**DEFINITIONS AND INSTRUCTIONS**

1. "Documents" means every means by which information is recorded or transmitted within the scope of FRCP 26(a)(2), 26(a)(3) and 26(b), including, but not limited to the following items: agreements, communications, correspondence, electronic communication or other "E-Mail", electronic or computer media or notes, telegrams, memoranda, summaries or records of telephone conversations, summaries or records of personal conversations or interviews, diaries, graphs, reports, notebooks, notes, charts, plans, drawings, sketches, maps, summaries or records of meetings or conferences, summaries or reports of investigations or negotiations, opinions or reports of consultants, photographs, motion picture film, brochures, pamphlets, advertisements, circulars, press releases, drafts, letters, any marginal comments appearing on any document, and all other writings.

2. "All" means "any and all."

3. "And" and "or" means "and/or."

4. All words used in the singular include their plural and all words used in the plural include their singular.

5. The term "Defendant" includes the Defendant BERKSHIRE, its principals, partners, officers, directors, subsidiaries, agents, subdivisions, agents, departments, and/or employees.

6. If any documents covered hereunder are withheld from production, furnish a list of all such documents, including:

(a) its title (if any),

- (b) its subject matter,
- (c) the identity of each attachment or appendices to the document,
- (d) the name and identification of each person to whom it is addressed,
- (e) the name and identification of each person to whom the document was distributed,  
shown or explained,
- (f) the name and identification of the person or persons by whom it was written,
- (g) its present custodian and (is) the ground or grounds upon which it is being withheld.

If a privilege is asserted as a ground for not producing, or otherwise responding to, a production request in whole or in part describe the factual basis for the claim of privilege and the client upon whose behalf such privilege is claimed in sufficient detail as to permit the Court to adjudicate the validity of the claim of privilege.

7. This document shall be deemed continuing so as to require further and supplemental production if the Defendant receives or generates additional documents between the time of original production and the time of the trial of this action.

### **DOCUMENT REQUEST**

**Place of Discovery:** LAW OFFICE OF MITCHELL J. WINN, PLLC  
300 Garden City Plaza, Suite 226  
Garden City, New York 11530  
(516) 385-6300

**Date and Time of Discovery:** November 27, 2023, at 10:00 a.m.

ITEMS TO BE PRODUCED RELATING TO PLAINTIFF'S CLAIM FOR DISABILITY BENEFITS WHICH AROSE ON OR ABOUT NOVEMBER 6, 2022:

#### **1. RELEVANT DOCUMENTS:**

Any and all records, business documents, and memoranda compiled, promulgated, entered, or otherwise kept within the dominion and control of Defendant pertaining to and including the

following:

- A. All Documents in Defendant's possession (internally circulated within BERKSHIRE, and/or externally with Plaintiff or any other person or entity, electronically or otherwise) of or concerning the subjects or circumstances addressed in Defendant's claim file, bates stamp pages 948;
- B. All Documents in Defendant's possession (internally circulated within BERKSHIRE, and/or externally with Plaintiff or any other person or entity, electronically or otherwise) of or concerning the subjects or circumstances addressed in Defendant's claim file, bates stamp pages 949 to 971.

**PLEASE TAKE FURTHER NOTICE** , that each of the foregoing requests are continuing as to any matters or information requested herein which may become available for discovery at a future time in this action.

Dated: Garden City, New York  
October 26, 2023

Yours, etc.,

LAW OFFICE OF MITCHELL J. WINN

By: 

Mitchell J. Winn (85:6966)

Attorney for Plaintiff ABRAHAM SCHWARTZ  
300 Garden City Plaza, Suite 226  
Garden City, New York 11530  
(516) 385-6300

To: ROBINSON & COLE, LLP  
Attorneys for Defendant BERKSHIRE LIFE  
INSURANCE COMPANY OF AMERICA  
2055 WASHINGTON BOULEVARD  
Stamford, CT 06901  
(203) 462-7500

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK }

COUNTY OF NASSAU } ss.:

MAXINE H. KENIG, being duly sworn, deposes and says as follows:

I am not a party hereto, am over the age of eighteen, and reside at Roslyn Heights, New York.

On the 25<sup>th</sup> day of October, 2023 I served the annexed

PLAINTIFF'S SECOND NOTICE FOR PRODUCTION

by depositing a true copy of same in a receptacle under the exclusive care and jurisdiction of the United States Postal Service, first class postage prepaid, addressed as follows:

Robinson & Cole LLP  
Attorneys for Defendant BERKSHIRE LIFE INSURANCE COMPANY OF AMERICA  
1055 Washington Boulevard  
Stamford, CT 06901

  
\_\_\_\_\_  
MAXINE KENIG

Duly sworn to before me this  
25 day of October, 2023

  
\_\_\_\_\_  
Notary Public

Mitchell J. Winn, Notary Public  
State of New York  
No. 02WI4882349  
Qualified in Nassau County  
Commission Expires February 14, 2025

2023